

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BEFORE THE HONORABLE JUSTIN S. ANAND
TRANSCRIPT OF PROCEEDINGS
MARCH 31, 2023

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1 (Atlanta, Fulton County, Georgia, March 31, 2023, via Zoom
2 Videoconferencing.)

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4 P R O C E E D I N G S
5 - - -

6 THE COURT: Hi. Good morning. This is Judge Anand.

7 Can y'all hear me okay?

8 MS. NORINS: Yes, Judge.

9 MS. EVANS: Yes.

10 THE COURT: Okay. Great. Well, good morning to
11 everybody and thanks to you-all for being available on
12 relatively short notice for this.

13 Let me begin by asking counsel to identify themselves
14 and state their appearances. I'm really just interested in
15 those who are going to be speaking, so I guess starting with
16 counsel for the petitioner here, if y'all would state your
17 appearances and introduce yourselves for the record, that
18 would be helpful.

19 MS. NORINS: Certainly, Your Honor.

20 I'm Clare Norins with the UGA School of Law's First
21 Amendment Clinic representing nonparty Betty Ndonga, along
22 with my co-counsel, Elora Mukherjee from the Columbia
23 Immigration Clinic.

24 THE COURT: Very good. Good morning to both of you.

25 MS. MUKHERJEE: Good morning.

1 THE COURT: And then I guess counsel for defendant
2 here, for Dr. Amin.

3 MS. EVANS: Your Honor --

4 THE COURT: Or, I guess, I'm sorry, he's the
5 plaintiff. I'm sorry, Dr. Amin is plaintiff in this case, so
6 I'm sorry.

7 Ms. Evans; is that right?

8 MS. EVANS: Yes, Your Honor. Good morning.

9 Stacey Evans on behalf of Dr. Amin, who is a
10 plaintiff in the NBCUniversal case.

11 Also here with me is Amble Johnson from my firm and
12 also Scott Grubman, who is co-counsel is on the Zoom as well.

13 Good morning.

14 THE COURT: Very good. Good morning to all of you.

15 And then, I'm sorry, do we -- am I right that we also
16 have counsel for NBC; is that right?

17 MS. LEVINE: It's Amanda Levine from Davis Wright
18 Tremaine, and we represent NBC. And I'm on with my
19 co-counsel, Cynthia Counts, from FisherBroyles.

20 THE COURT: Great. Good morning to y'all as well.

21 I mean, I think that's everyone who is a party in the
22 case, if I'm not mistaken.

23 Is there anyone else, any other counsel here
24 appearing? Okay.

25 All right. Very good. Well, I have reviewed both

1 Ms. Ndonga's brief and also Dr. Amin's brief that we received
2 last night and I've reviewed all of that in detail and the
3 attachments. But let me give y'all the opportunity as well to
4 make any additional points and also I may have some questions.
5 But you can be assured that I've read the material, so you
6 don't have to begin from scratch.

7 But I'll let you have a chance for each of you to
8 argue your positions and I do have a few questions here and
9 there probably.

10 So I guess let's just start with Ms. Norins on behalf
11 of the petitioner.

12 MS. NORINS: Thank you, Judge.

13 So as earlier stated, I'm here seeking relief on
14 behalf of non-party Ms. Betty Ndonga. Ms. Ndonga was
15 improperly served. It appears maybe that service has now been
16 corrected. We have not been able to confirm that with her,
17 but assuming that the affidavit submitted along with Amin's
18 papers last night is correct, she's now been personally served
19 with an unduly burdensome nonparty subpoena issued by
20 Mahendra Amin in his defamation suit against media company,
21 NBCUniversal.

22 Ms. Ndonga had --

23 THE COURT: Let me ask you a quick question about
24 service.

25 MS. NORINS: Okay.

1 THE COURT: Because you said you haven't been able to
2 confirm the personal service.

3 But the original service, was that not on someone who
4 resided at her residence, which normally under Rule 4 would be
5 sufficient service?

6 MS. NORINS: So the subpoena was handed to
7 Ms. Ndonga's mother, Lucy Ndonga on March 14th. And in the
8 Northern District of Georgia, Rule 45 subpoenas are required
9 to be served by personal delivery to the deponent. And so we
10 maintain that that initial attempted service was improper.

11 And then we immediately notified Amin's counsel of
12 that. And now it appears that they have personally served
13 her. But again, we haven't been able to confirm that --

14 THE COURT: Okay.

15 MS. NORINS: -- with Ms. Ngonda.

16 THE COURT: Okay. All right. I'm sorry to pull you
17 away from that.

18 MS. NORINS: No, no problem.

19 So separately, Ms. Ndonga has sued Mahendra Amin and
20 other defendants in a punitive class action titled *Oldaker v.*
21 *Giles* that is pending in front of Judge Sands in the Middle
22 District of Georgia. And Judge Sands has issued a stayable
23 discovery order in that case. So by seeking to depose
24 Plaintiff Ndonga, Defendant Amin is violating that stay.

25 With that background, there are ample grounds for

1 quashing Amin's subpoena to Ms. Ndonga in its entirety. The
2 service issue has now presumably been cured, but there is the
3 violation of the *Oldaker* discovery stay to contend with and we
4 have moved separately in front of Judge Sands for an order to
5 show cause why Amin should not be sanctioned for violating
6 that stay order.

7 And third, the nonparty subpoena to Ms. Ndonga is
8 unduly burdensome, for a number of reasons. It will require
9 her to testify about sensitive and traumatic subject matter in
10 a case to which she is not a party and she had had nothing to
11 do with these statements that were made by NBCU that Amin is
12 challenging as defamatory.

13 Amin has no need for her testimony about what
14 procedures he performed on her as those are established by her
15 medical records.

16 And this will also set up Ms. Ndonga to be subjected
17 to a series of repetitive and duplicative depositions on the
18 same subject matter, then she will almost certainly be deposed
19 again in the *Oldaker* case, both by Amin and the other
20 defendants in that case.

21 We maintain that she has little to no relevant
22 information that would go to either the falsity of the alleged
23 defamatory statements or to state of mind by NBCU or actual
24 malice at the time they made these statements.

25 So for these reasons, we believe the subpoena is

1 unduly burdensome and would move to quash it in its entirety
2 under both Rule 45 and Rule 26.

3 THE COURT: Let me ask: As to relevance, Dr. Amin's
4 brief states that in the *Oldaker* case -- I'm sorry, in the
5 Universal Case, NBC has issued initial discovery or disclosure
6 statements listing the *Oldaker* plaintiffs as witnesses with
7 relevant information in the case that they would seek to use
8 in support of their claims or defenses in that case.

9 Would that not, if nothing else, by itself, entitle
10 Dr. Amin -- I mean, putting aside the stay and all those
11 issues, purely relevance, would the fact that your client is
12 identified as a witness to be used in support of Dr. Amin's
13 adversary in that other case, by itself, entitle Dr. Amin to
14 take her deposition, whether now or later.

15 I'm just sort of trying to set the stage.

16 MS. NORINS: Sure. I'd be happy to speak to that.
17 NBCU has identified the *Oldaker* plaintiffs as a group of
18 persons with relevant information. Nowhere in their discovery
19 responses that have been shared with us are any of the
20 particular plaintiffs identified or any reason given for why
21 their particular testimony would be relevant.

22 Ms. Ndonga was not a source for it -- the published
23 statements by NBCU, she did not speak to them, she did not
24 provide information to them. There is really no reason to
25 depose her about what NBCU knew at the time that they made

1 these broadcasts. And I would maintain that by listing
2 *Oldaker* plaintiffs as a general category with no specific
3 showing of what Ms. Ndonga could testify to that would be
4 relevant, that does not satisfy relevancy.

5 THE COURT: Okay. All right. I think those were my
6 questions for you.

7 I don't know if there is anything else you wanted to
8 add. As the movant, I'll let you have rebuttal or allow you
9 to respond, but...

10 MS. NORINS: So I would like to provide a little bit
11 of context about who Ms. Ndonga is, because I think that goes
12 to the undue burden that this subpoena places on her.

13 THE COURT: Um-hmm.

14 MS. NORINS: So Ms. Ndonga was brought here from
15 Kenya at the age of two years old and she has lived in the
16 United States her entire life.

17 Tragically, she suffers from very serious mental
18 health conditions, namely, schizoaffective disorder and
19 posttraumatic stress disorder and because of this, in May of
20 2019, an immigration judge in Atlanta adjudicated her mentally
21 incompetent.

22 It was after that adjudication of mental incompetency
23 that she was subjected to nonconsensual and invasive and
24 medically unindicated procedures at the hands of Amin while
25 she was involuntarily detained by ICE. And Amin's treatment

1 of her caused her significant physical and emotional trauma.

2 And an evaluating doctor has adjudged that this
3 worsened her preexisting PTSD and also caused her to lose
4 grounds in terms of her coping with her mental illness.

5 And so this deposition is seeking to ask her to
6 answer oral questions, to be grilled in a room full of lawyers
7 where Amin, as a party, would have the right to be present
8 about these deeply traumatic events in a proceeding to which
9 she is not a party.

10 She has not put any of these issues by NBCUniversal
11 at issue. And she wasn't a source for any of their
12 statements. And so under the *Castleberry* case from the
13 Southern District of Georgia, 2019, this imposes a tremendous
14 burden on her to be asked to testify about this private
15 information.

16 And I understand there is a protective order in place
17 in the Amin case and that would protect this information from
18 being publicly disseminated, but it would not protect
19 Ms. Ndonga from being orally grilled in a room full of
20 lawyers, where again, Amin would have the right to be present.

21 And so I would like to point the Court to the
22 *Fappiano* case from the Second Circuit that we cited in our
23 briefing, because I think that's a very factually similar
24 case. So in that case, a former criminal defendant sued for
25 malicious prosecution alleging that the NYPD had manufactured

1 evidence against him for a rape charge and he wanted to depose
2 the alleged victim of the sexual assault. She was a nonparty.
3 But he argued she had relevant information as to how the
4 investigation was conducted.

5 And the Court denied that. And the Court said,
6 quote, the woman's interest in maintaining her privacy and
7 preventing unwanted exposure to past trauma was sufficient
8 reason to quash the subpoena.

9 And we think that is very analogous here where
10 Ms. Ndonga is a nonparty in this proceeding. She would be
11 asked to testify to events that are similar in gravity, in
12 effect, to a sexual assault and she should not have to do this
13 in this case. She may have to do that in her case-in-chief,
14 where she had brought claims against Dr. Amin, but that is the
15 proper venue and forum for that deposition, not this case.

16 THE COURT: All right. Well, thank you very, very
17 much.

18 I guess I'll turn it over to Ms. Evans.

19 Before I do that, before I do that, let me -- I know
20 I intended -- I overlooked saying this at the outset.

21 Whenever we do Zoom conferences, it's my habit to
22 remind everyone that -- well, we do have a court reporter
23 that's taking this down, it would not be permissible for any
24 of the attendees or participants to be recording this
25 yourselves. Of course we don't have to say that if you are

1 here in the Court, that's sort of obvious, and most of you
2 would have had to have given up your phones in the first
3 place.

4 But one odd effect of Zoom hearings is with everyone
5 in their own offices or sometimes even homes, you can be -- we
6 all have phones and you can be recording it informally. And I
7 just want to remind everyone that that's not permitted. We do
8 have a no cameras in the courtroom rule that applies in
9 federal court, that includes Zoom.

10 I mean, obviously, y'all have cameras on your
11 devices, that's not what I mean, but you can't be recording
12 this separately from the official way, which we do have a
13 court reporter present.

14 So sorry, I usually say that at the outset. I
15 forgot. But I'll say it now.

16 But with that, I'll turn it to Ms. Evans.

17 MS. EVANS: Thank you, Your Honor, and good morning
18 again.

19 I'm going to start by addressing some of the
20 questions that you raised to the petitioner, because I think
21 bringing us back to the standard that the movant would have to
22 prove is most relevant here. And that is on a motion to
23 quash, there is no ability to quash it if there is no undue
24 burden or if the subpoena seeks discoverable information,
25 which it certainly does. And Your Honor picked up quickly on

1 the relevancy.

2 Yes, the plaintiffs in *Oldaker* along with every
3 detainee at ICDC is identified by the defendant in the NBCU
4 case as folks having relevant, discoverable information. And
5 that only makes sense, because it's a defamation case. And in
6 a defamation case, truth is always a defense, which means that
7 we, as plaintiff, as Dr. Amin's counsel, we have the burden to
8 prove that the statements were false.

9 That means no matter the malice, no matter who
10 repeated things to MSNBC, the underlying allegation here is
11 that Dr. Amin performed unnecessary, unconsented to procedures
12 and that he did so harshly, that he bruised folks, that he
13 lacked undue care. For the first time here today, I'm hearing
14 his treatment be analogized to sexual assault, which is an
15 extreme allegation, and one that on its own should require
16 cross-examination.

17 But these witnesses, of which Ms. Ndonga is one, have
18 relevant information and there is absolutely no way around
19 that, Your Honor. And it would cripple Dr. Amin with his
20 burden if he's not allowed to have access to the women that
21 made allegations.

22 Now, we've been very -- we have tried to ease the
23 burden as much as possible. We are seeking to depose
24 detainees who we know have made allegations against Dr. Amin,
25 whether they are in the *Oldaker* case or there are some others

1 who have spoken out in other ways. We are seeking to depose
2 those individuals.

3 I would also point out, Your Honor, that this is
4 something that has been known in the *NBCUniversal* case since
5 the very first time that the parties' counsel got together to
6 discuss discovery. In our very first discovery conference,
7 and this is memorialized on the docket, in December of 2021,
8 both sides were talking about how there was going to be need
9 for significant third-party discovery, including from
10 detainees, who by the time we got to discovery, may be outside
11 the country.

12 Clearly, from the beginning, both sides have
13 identified detainees as having relevant information. The fact
14 that they have a separate lawsuit does nothing to change that.
15 If that lawsuit, the *Oldaker* lawsuit did not exist, there
16 would be -- we wouldn't even be here. I still -- I don't
17 think it raises any grounds to stop this subpoena, but
18 certainly, we wouldn't be here, and because it's relevant in
19 our case, that's enough.

20 I don't know and frankly don't care what's going on
21 in the *Oldaker* case. That's not my case. I'm not counsel of
22 record. I know it's there. I generally don't know the status
23 of it. I don't keep up with it because I'm focused on the
24 defamation case.

25 I also want to point out, Your Honor, that in

1 addition to identifying these detainees, including the *Oldaker*
2 plaintiffs, as having relevant, discoverable information,
3 defendants have served extensive written discovery on
4 plaintiffs asking for every document exchanged in the *Oldaker*
5 case. So they've brought that case to prominence in our case
6 and we disagree that everything about that case would possibly
7 be relevant, because it includes allegations against federal
8 agencies and has to do with COVID and other treatment of
9 detainees that aren't relevant in Dr. Amin's case.

10 But we do agree with MSNBC -- MSNBC is the publisher,
11 NBCUniversal, obviously, owns MSNBC, so they're the defendant,
12 but sometimes I slip into saying MSNBC, because that's who
13 we're talking about here.

14 But we agree with defendant in that case that
15 certainly, the allegations that the detainees made against
16 Dr. Amin are relevant and we also know, and this was in our --
17 in our papers, I believe, that there is a -- there is joint
18 defense and common interest agreements between counsel for the
19 *Oldaker* plaintiffs and NBCUniversal.

20 And indeed, they are in contact with each other, so
21 we would be committing malpractice, Your Honor, as Dr. Amin's
22 counsel, if we did not seek to depose these detainees, because
23 when -- when defendant ultimately files their summary judgment
24 motion, which we know will happen when discovery closes in our
25 case, they could very well attach declarations that they've

1 been able to get through cooperation with counsel.

2 And if we had not exercised our due diligence in
3 seeking to find out about that testimony beforehand, we would
4 be on our heels. And the law just simply does not allow
5 one-sidedness like that. We are entitled to probe these
6 statements that Mr. Ndonga has brought up here today that
7 there has been findings of trauma, that Dr. Amin worsened her
8 condition, that she did or didn't talk to reporters. We are
9 entitled to know if she did or didn't talk to Dawn Wooten, who
10 is the person who started the media frenzy. We don't have to
11 take Ms. Norins' word for it. That's not how it works.

12 THE COURT: Let me interrupt you for one sec here. I
13 mean, assuming I were to agree with you on the issue of
14 relevance, and, I mean, you heard my question to Ms. Norins on
15 that, that suggested some understanding of your position with
16 regard to this being a witness identified by your adversary,
17 which essentially gives you the right in most cases to depose
18 them. And that was a question that I posed to Mr. Norins.

19 But putting aside whether or not I agree with you on
20 the -- your ultimate right to at the end of the day depose
21 her, is there not a potential prejudice to that occurring
22 right now?

23 And the reason I'm asking that is there is a stay
24 issued by Judge Sands in the *Oldaker* case, principally on the
25 grounds of the potential interference with an ongoing

1 investigation, governmental investigation, including potential
2 criminal investigation, that stay, that order perhaps doesn't
3 literally apply to this subpoena, that's not for me to say one
4 way or the other, but of course it's under the caption of the
5 *Oldaker* case, not the defamation case.

6 But as a practical matter, allowing this to go
7 forward now, would it not defeat the purposes of that stay and
8 allow for what Judge Sands found for the interest of justice
9 And the integrity of these governmental investigations,
10 important public interest concerns to be defeated by allowing
11 a deposition now of essentially, as I understand it, likely to
12 be the same exact subject matter that he's determined cannot
13 go forward now in that case. And I guess that's part one of a
14 lengthy question.

15 The other part would be: Wouldn't it, therefore,
16 since you have a discovery period, as I understand it that
17 goes through July, is there not good reason to say even if I
18 were to agree you're, in general, entitled to take this
19 deposition at some point, there's no magic to that happening
20 right now and let's at least hold off on this and, you know,
21 maybe closer to that point, there will be movement on the stay
22 or there will be some other reason why the concerns no longer
23 apply, but at least they do now. And why shouldn't that be a
24 reason to at least stay this at this time?

25 MS. EVANS: Your Honor --

1 THE COURT: So that's a lot to unpack, I guess, but
2 that's my major concern as to your position.

3 MS. EVANS: Thank you, Your Honor. And the short
4 answer is no, there's absolutely no reason to stay because of
5 anything in the Middle District or otherwise.

6 First of all, just stepping back, and I know we filed
7 our papers late, and I apologize for that. We were responding
8 in realtime and a lot going on, so we do apologize for it
9 coming over so late, so you may not have been able to focus in
10 on this, but there is no stay of the *Oldaker* case.

11 THE COURT: No. And I'm sorry. I mean, if I said
12 that, I misspoke. No, I understand that. But there is a stay
13 of discovery in the *Oldaker* case, which is really what we're
14 talking about.

15 MS. EVANS: Yes, your Honor, there is a stay of
16 discovery, but only because there are dispositive motions
17 pending, not because -- there's no discovery stay because of
18 any criminal or other ongoing investigations. There was
19 originally a stay of the whole case because of that, but that
20 was lifted. And so the stay that exists on discovery in the
21 *Oldaker* case now is just like the stay that we had temporarily
22 in the *NBCUniversal* case or you would have in any civil case,
23 where when you have a dispositive motion pending, typically,
24 discovery stops until you find out if you're going to need it
25 or not, so that's one.

1 But two, and this is -- this is perhaps the most
2 important part is that early on in the NBCUniversal case, the
3 defendant there suggested that we stay discovery in our case
4 not because of dispositive motions or anything of that, but
5 because of ongoing congressional and criminal investigation.

6 And the magistrate judge in the Southern District of
7 Georgia issued an order, and it's Document 43 on our -- on our
8 docket there, and I can provide for you, denied that and said,
9 no, we're not going to put discovery in this case on hold.

10 And you have experience, as well as my co-counsel,
11 Scott Grubman, in knowing that -- and one of the reasons that
12 we argued that this shouldn't happen is sometimes you don't
13 know when investigations are over. The government doesn't
14 always tell you we're done. And so we could be sitting here
15 forever if we were doing that.

16 But for context, and Ms. Norins talked about some
17 context with her client, I want to make sure that the Judge is
18 aware, because -- because of the media coverage and the media
19 has the largest microphone here, there may be some
20 misconceptions about Dr. Amin.

21 I want to step back and say while there has been
22 ongoing criminal investigations because of the media frenzy,
23 Dr. Amin has not been charged with anything. Dr. Amin has
24 been investigated by the Medical Board of Georgia since this
25 media frenzy. He still has his license to practice medicine.

1 He still has admission privileges at his hospital.

2 So there is -- Dr. Amin, we believe in the end, will
3 be fully exonerated in the -- and not only in the justice
4 system but in the court of public opinion, and that's why our
5 defamation case is so important.

6 But no, Your Honor, there is no reason to stay
7 discovery in any way in this case, whether it's third parties
8 or otherwise, because of anything going on in the Middle
9 District of Georgia.

10 It also would be unfair because it would prejudice
11 Dr. Amin in being able to comply with his obligations under
12 the scheduling order in his case where a judge ahs already
13 said, no, we are not going to put discovery in this case on
14 hold because of any outside investigations and doing that
15 knowing that there was significant third-party discovery that
16 was going to be sought by detainees by both sides in the
17 NBCUniversal case.

18 To your point about timing in our case, generally
19 because the discovery period goes through July 31, we have the
20 burden on all of our elements because we're the plaintiffs and
21 that's how the law works. We have the burden on falsity, we
22 have the burden on malice, which is a very high burden, which
23 we won't get into today, but I believe shouldn't exist, but
24 that's neither here nor there.

25 But knowing that, getting more information on how

1 bad, how absolutely bad these allegations were and how false
2 they were and whether MSNBC should have known that, where they
3 should have had reason to doubt what Ms. Wooten was saying,
4 whether they should have had reason to doubt what they were
5 relying on in other reporting. All of that is relevant, but
6 the first things starts with what these detainees did or did
7 not say.

8 And there's a lot we believe that Dawn Wooten said
9 they said, they didn't say. And finding that out before we
10 get to depositions of producers and on-air personalities of
11 MSNBC is important. And that's why we've staged the discovery
12 as we have. And it would burden Dr. Amin if we have to, for
13 scheduling purposes, talk to the on-air personalities, talk to
14 the producers, talk to the researchers before we know what
15 these detainees actually said to anyone.

16 And again, we don't have to take Ms. Norins' word for
17 who they talked to or what they might have said, because we
18 believe that the whistleblower -- the whistleblower is
19 completely not credible, that -- and it's already been her
20 allegation that there were mass hysterectomies has already
21 been largely discredited, because there were two, and no one's
22 been able to say otherwise.

23 But none of her allegations about the gynecological
24 treatment of the detainees at the Irwin County Detention
25 Center were based on firsthand accounts. And we're entitled

1 to know how did she come up with this. Who did -- who did she
2 actually talk to. And we don't have to take her word for it.

3 We need to be able to talk to these detainees that we
4 know have allegedly made allegations against Dr. Amin and say
5 you talk to Ms. Wooten?

6 Did you talk to the press?

7 Did you tell anyone?

8 We're entitled to probe that and we are -- we need to
9 do that before we get to the parties.

10 Also, and this is in Judge Wood's order, largely
11 denying NBCUniversal's motion for judgment on the pleadings,
12 part of our malice investigation here is finding out what
13 these women were offered, what were they told, how did they --
14 how did these individuals who, according to evidence that we
15 have from other third parties, never talked to the transport
16 officer, for example, the woman that was with them in the
17 investigation -- in the exam room every single time and saw
18 the informed consent, saw the proper treatment by Dr. Amin.

19 Did any of these detainees ever say anything to that
20 woman that was always there?

21 We know the answer is no, but we are entitled to ask
22 them and probe and expose how much of a hit job this was
23 against Dr. Amin.

24 And again, I feel so strongly about this and
25 Ms. Norins went in and provided some context for her -- her

1 client here. Dr. Amin is the same. Dr. Amin came to this
2 country with nothing. He was born and raised in India and had
3 a medical degree, but came here and sold newspapers in
4 New York.

5 Finally, worked his way up to be able to get a
6 medical license and he's practiced medicine in Georgia for
7 over 35 years, often being the only OB/GYN in a very
8 underserved area of Southeast Georgia.

9 As part of that practice, he did treat detainees at
10 Irwin County Detention Center. And then in September of 2020,
11 found himself in the media -- in the middle of a media frenzy
12 alleging him of going on a sterilization campaign and
13 performing mass hysterectomies.

14 Again, that's -- that's how this all started. That's
15 what got the media excited. And it has been largely
16 discredited, because again, only two, two hysterectomies, both
17 of which have now been reviewed by independent OB/GYNs and
18 found to have been proper.

19 So now what we have -- now what we have, Your Honor,
20 is an alleged whistleblower, Dawn Wooten, who talked to
21 unnamed detainees that we are entitled to find out falling
22 back on alleged unnecessary procedures that were performed
23 harshly, that were performed without uninformed consent. That
24 is the underlying truth or falsity in our defamation case.

25 And the only way we can get to those underlying

1 statements is to talk to these detainees. And I'm sorry that
2 there's another case going on. But that's not my problem.

3 And, in fact, the judge in our case has already said
4 that's not his problem. Judge Cheesbro is our magistrate,
5 Judge Wood, she -- no one has stepped on or suggested that the
6 magistrate judge's order in that regard is improper. They
7 know about the *Oldaker* case, they know about congressional
8 investigations, they know about criminal investigations, and
9 they said our case marches on.

10 I would also mention briefly that the idea that there
11 might be a second deposition or some undue burden on
12 Ms. Ndonga here is speculation at this point. There's
13 dispositive motions in that case. She may very well never get
14 to discovery. So we can't sit around and wait on this
15 hypothetical situation.

16 And I would say, and I'm not counsel of record, so --
17 and Mr. Grubman, and he's not even the main counsel in that
18 case, there's insurance counsel for Dr. Amin in the *Oldaker*
19 case, so I'm not binding him, but I would suggest that any
20 potential burden for a second deposition only comes into play
21 if they get to discovery.

22 And if they do, I feel certain that counsel could
23 work together to see if there is any ability to limit the
24 areas of examination to not reexamine perhaps what we go into
25 for Dr. Amin in this case, but that's a hypothetical. There

1 is no undue burden at this point for her -- for Ms. Ndonga to
2 come forward and answer questions on cross-examination.

3 I mean, just because the person who speaks first, and
4 in this case, the loudest, because they got some media
5 attention behind them, they might sound truthful until there's
6 cross-examination. I think there is even a Bible verse that
7 says we but we all know that's true. That's what defamations
8 cases are about.

9 THE COURT: Let me ask you, and in a way, I'm sort of
10 repeating the question I had before in a different way.

11 But, you know, even what you just said about the
12 hypothetical and your hope or prediction, although you don't
13 represent him in that case, but that if it were to come to
14 pass that there was a need to depose Ms. Ndonga in the *Oldaker*
15 case, that something could be worked out so that there
16 wouldn't be duplication, et cetera.

17 Again, given that -- I mean, we have four more months
18 before discovery closes in your case. I mean, would it not --
19 calling at least something of a time out here and holding off
20 on this, at least for the time being, would it not increase
21 the chance that we could know the answer on that?

22 I mean, I don't know when these *Oldaker*'s motions are
23 going to be resolved. I don't know when this federal
24 investigation is going to be resolved.

25 But if we were to stay this for a period of time and

1 perhaps in a few months, before the expiration of discovery
2 here, we'd know the answer to these things and a deposition
3 could be done with -- cooperatively, as you just described,
4 that isn't duplicative, that would, it seems to me, satisfy or
5 be consistent with the concerns of Rule 1 to not -- to limit
6 burdens and expense and make litigation as efficient for the
7 parties and as least burdensome as possible.

8 Going forward now, it just strikes me when we have
9 four more months to potentially work with here eliminates that
10 possibility with -- I'm struggling to see the marginal benefit
11 or what is achieved by getting this done next Tuesday.

12 Does that make sense as a question?

13 MS. EVANS: I understand your question, Your Honor.

14 And as to next Tuesday, I want -- I want to move
15 forward. We've been trying to get this discovery for a year.
16 And certainly we paused while there was a temporary stay
17 during the motion for judgment on the pleadings.

18 But then we immediately, diligently picked back up
19 the effort to get this deposition, so we've been waiting for a
20 while. And again, I would go back that with all due respect
21 to this Court, the Southern District of Georgia where our case
22 is pending has heard these arguments about the potential
23 merits of staying and holding and they said no and --

24 THE COURT: Well, was that with respect specifically
25 to a deposition of a party in the *Oldaker* case that was

1 subject to a discovery stay or was it more a discussion about
2 staying discovery altogether as a general matter?

3 MS. EVANS: It was -- no, this was -- the defendant
4 in our case moved to stay discovery for two reasons, they had
5 a dispositive motion and then they also said because of all of
6 these ongoing congressional investigations and the *Oldaker*
7 case specifically.

8 And reading from that order, which again denied that
9 request, the Court notes that defendant highlights the stay of
10 discovery in a related case in the Middle District of Georgia,
11 *Oldaker v. Giles*, as justification for a stay until the
12 conclusion of government investigations.

13 Plaintiff argues the *Oldaker* stay has no bearing on
14 this case, which -- which we do here, and that the outcomes
15 are different. There's so much going on in *Oldaker* than are
16 going on in here.

17 And then here's -- here's the final -- the final
18 statement from the Judge: Indeed, defendant has not shown
19 discovery should be stayed until all government investigations
20 are concluded. Defendants' generalized concerns about how
21 government investigations might impede discovery in this case
22 are not enough.

23 And it's an extreme, undue burden on Dr. Amin, who
24 again, has had his life upended. Talk about trauma. He has
25 the right to move forward in his defamation case. He's gotten

1 past a dispositive motion. A federal judge has said you have
2 stated a claim to move forward on discovery in proving falsity
3 on 27 statements that all go to how these detainees claimed
4 that they were treated or not treated.

5 He should not have to wait, and four months seems
6 like a long time, we're also talking about summer, I would go
7 back to Your Honor, we are entitled to take discovery in the
8 order that will allow us to most efficiently prosecute our
9 case on behalf of Dr. Amin, and that includes talking to
10 detainees first, having that wealth of information before we
11 go and talk to the party defendants.

12 And so putting off -- it's not just putting off one
13 deposition that's sort of an on-the-side issue, if it were, I
14 might agree with you. But that's not what this is. This is
15 the underpinning of the entire case, what these detainees
16 said.

17 And we mentioned this in your briefing, but this is
18 not the only motion to quash that we're apparently going to
19 have to contend with. There's been a filing frenzy in
20 district courts. And I suspect there will be more, because we
21 are attempting to serve.

22 We are getting met with extreme efforts to evade
23 service, which professionally is very frustrating, given all
24 the lawyers that you can see on this screen and how in touch
25 the defendant in our case is with the counsel that is on

1 record here. But that's neither here nor there.

2 Dr. Amin is the plaintiff. He's survived a
3 dispositive motion. The judge in his court has said his
4 discovery should be able to move forward. It's clearly
5 relevant, according to all of the parties in the case. There
6 is no undue burden on Ms. Ndonga at this point. There may be
7 an argument for a later day, but that's not for us to decide
8 here.

9 And there's absolutely no reason that this valid,
10 appropriately served subpoena should not be able to move
11 forward unfettered.

12 THE COURT: All right. All right. Well, I
13 appreciate all of that.

14 Let me turn to -- you know, I don't know if counsel
15 for NBC has a position here. This is not really directly your
16 fight, but you're a party to the case, so you have the right
17 to be heard, if you wish to, but I'll turn it to you at this
18 time.

19 MS. LEVINE: Yes, sir. Thank you, Your Honor.

20 Just two points, without getting into the merits of
21 our defamation claim, which I don't think are relevant here.

22 Ms. Evans has said that we're in constant contact
23 with the *Oldaker's* plaintiffs' counsel, and that we have a
24 joint defense agreement. That's incorrect. We have had
25 limited conversations with plaintiffs' counsel about

1 procedural issues in the *Oldaker* case, like what the status of
2 the case is. We don't have a joint defense agreement with
3 them.

4 And the second point that kind of goes to that,
5 another reason that we would ask that the deposition not go
6 forward next week, and as Your Honor was suggesting go forward
7 later in the discovery period is that we haven't been able to
8 obtain the documents from the *Oldaker* case. The first time we
9 were able to see the second amended complaint was this week
10 when Ms. Ndonga's counsel filed it in connection with her
11 motion to quash.

12 We would ask that we have an opportunity to review
13 the documents before the deposition goes forward. The
14 documents on the Pacer docket can't be accessed by nonparties
15 to the case, so we've been asking Dr. Amin to provide them,
16 he's refused, until this week has provided a couple of
17 documents, but not everything that we would want to see before
18 the deposition went forward.

19 THE COURT: Okay. All right.

20 All right. Well, let me turn it back to Ms. Norins,
21 if you have any final words as the movant, you're entitled to
22 rebut, so let me -- let me turn it back to you.

23 MS. NORINS: Thank you, Judge.

24 So let's just be clear about what remains at issue in
25 Amin's defamation case. There are 27 remaining statements, 23

1 of which pertain to hysterectomies, neither Ms. Ndonga nor any
2 of our other *Oldaker* plaintiffs had a hysterectomy performed
3 by Amin. That's established by the medical records.

4 So we're only really talking about four statements
5 that could possibly be relevant in terms of what our client
6 could testify to.

7 Also, as I understand Ms. Evans' position, she wants
8 to depose as many of Amin's patients as she can before she
9 actually deposes the people at NBCU and the folks they
10 actually talked to. I think that's the reverse order of what
11 makes sense.

12 The defamation claims that are still live pertain to
13 the whistleblower complaint, Dawn Wooten's interview with
14 MSNBC and apparently some conversations with lawyers who were
15 representing women at the detention facility, so let's start
16 by deposing those people and asking them who they spoke to.
17 And if they say they've spoke to any of our *Oldaker*
18 plaintiffs, then maybe we come back and discuss this further,
19 but it just seems like they're proceeding in the opposite
20 order of what makes sense.

21 I also want to point out that we have offered
22 declarations from our plaintiffs in lieu of deposition, and
23 not just one declaration. We offered we would do an initial
24 declaration in response to questions from both NBCU Amin, and
25 that we would even do a second follow-up deposition if they

1 had additional questions.

2 We have no obligation to cooperate with them in this
3 case. We are nonparties. But we offered two declarations
4 from each of our plaintiffs that they're interested in. And
5 that was simply not enough for them. We offered them two
6 bites at the apple, and they want to reserve the right for a
7 third bite at the apple to depose our plaintiffs after getting
8 two declarations from them. And that's just not reasonable.
9 And so that's why we are here for this motion to quash because
10 we've tried to accommodate them and they just simply will not
11 take a reasonable position on it.

12 THE COURT: Let me ask you on that, I mean,
13 mechanically, what do you mean by declarations? I mean,
14 because -- I mean, are you -- do you mean answering written
15 questions or do you mean -- I mean, because how do you know
16 what Ms. Evans is going to ask so that you know what would be
17 the declaration? Does that make sense?

18 MS. NORINS: Yes. So we offered that, you know,
19 Amin's counsel and NBC's counsel could send us their questions
20 that they have for our plaintiffs and if they reasonably
21 relate to any of the challenged statements at issue, we would
22 provide written responses in the form of a declaration. And
23 then, if they had further follow-up questions, based on that
24 initial declaration, we offered we would do a second
25 declaration.

1 And that would provide them with presumably the
2 information that they're seeking and that was simply not
3 acceptable to them, because they wanted to reserve the right
4 to still depose our plaintiffs after having, you know, two
5 chances to ask them questions.

6 THE COURT: So --

7 MS. EVANS: Your Honor.

8 THE COURT: Let me just make sure that I understand
9 it. So your offer would be to -- would be instead of a
10 deposition, an oral deposition, that you would answer two
11 rounds of written questions essentially.

12 MS. NORINS: Well, that was our offer to them in an
13 effort to avoid the motion practice that we're now having to
14 engage in. Obviously, reserving our rights, I mean, we still
15 maintain that these women that we represent were not the
16 source of any of the statements that NBCU made in their
17 broadcast, so we don't think that they have any relevance, and
18 if -- if so, it's very, very marginal.

19 But we didn't want to be filing motions to quash in
20 multiple jurisdictions, we -- you know, we were willing to
21 cooperate, within reason, and just couldn't get to that point.

22 So, you know, it -- I appreciate that you're saying
23 that maybe the deposition wouldn't need to go forward now, it
24 could wait and see what happens with the stay in *Oldaker*.

25 At any point where our plaintiffs might be deposed,

1 we maintain that it should not be through oral questioning,
2 that it should be through written answers -- or written
3 questions and written responses.

4 THE COURT: Even if the stay in *Oldaker* -- even if
5 the stay in *Oldaker* is over, your clients who filed lawsuits
6 against Dr. Amin would take the position they don't need to be
7 deposed?

8 MS. NORINS: Well, I think unless we could work out
9 some sort of consolidated deposition for both cases.

10 THE COURT: Okay.

11 MS. NORINS: Yeah. I mean, we don't want them to
12 have to go through it twice.

13 THE COURT: Okay. All right. I heard someone piping
14 up. Ms. Evans, was that you? I will let you -- I may allow
15 Ms. Norins to respond, because that's sort of my obligation to
16 her as the movant.

17 But if you want to say something, I'll let you.

18 MS. EVANS: Understood. Yes, Your Honor. And thank
19 you.

20 I just briefly wanted to respond about the statements
21 about the cooperation, because it's a complete
22 misrepresentation of the record. I have bent over backwards
23 attempting to make this as convenient as possible on these
24 third parties. And that started over a year ago.

25 And then well before we got to the point we got to

1 now, because of the subpoenas that we ultimately had to issue,
2 I had been talking extensively with them. I originally asked
3 for just their cooperation in setting depositions. They posed
4 the possibility of deposition by written questions. And when
5 I looked into that process, it was so clunky and burdensome,
6 it wasn't going to save anybody any time or effort.

7 And so I suggested, I suggested that we provide a
8 list of questions that we wanted answers to and that counsel
9 assist their clients in preparing a declaration that would
10 answer those questions.

11 But because that's putting -- that's giving up a lot
12 of right to have probing follow-up questions and
13 cross-examination, I said I would have to reserve the right to
14 depose if the answers were not fulsome, if they were evasive,
15 and I was told absolutely not. All I would be able to have
16 from them was a second declaration, which if I didn't find the
17 first declaration sufficient, why would I think that a second
18 one would be?

19 And then, Your Honor, I'm going to be honest, and not
20 all of this was attached to the papers, because given that
21 service is -- I think everybody agrees is perfected at this
22 point, it's not really relevant, but there have been two
23 declarations shared with us in this case that are perjurious,
24 they just are.

25 And so at this point, given how prone it seems these

1 witnesses are to just writing whatever is convenient for them
2 in a declaration, how little they seem to value signing on the
3 line that says they're under penalty of perjury, I cannot in
4 good conscience allow -- I can't agree to accept any
5 declaration in lieu of probing deposition testimony. And
6 that's only been heightened today by Ms. Norins' honestly out
7 of left field allegation of what Dr. Amin did in his treatment
8 of Ms. Ndonga is akin to sexual assault. I simply, as an
9 advocate, cannot do that.

10 And I also just wanted to respond briefly to
11 Ms. Levine who said that they're waiting on documents. Those
12 are being produced this week, that -- that -- and if we need
13 to postpone the deposition for a week or something like that,
14 that's fine. I just cannot agree that we're going to put our
15 case on hold where a judge has said we shouldn't have to for
16 another case.

17 And they are in communications, that's been written
18 in written responses to interrogatories that they've had
19 conversations with Ms. Norins, Ms. Norins and other counsel,
20 perhaps, that are covered by the common interest and joint
21 defense privileges. That's their words, not mine.

22 THE COURT: All right.

23 MS. NORINS: Your Honor, can I just --

24 THE COURT: Ms. Norins, yes, yes, yes. You may.

25 MS. NORINS: Your Honor, can I just respond?

1 THE COURT: Yes, you may.

2 MS. NORINS: So this issue about the declarations, I
3 mean, there is nothing perjurious about them, and I would
4 challenge Ms. Evans to produce evidence of what she thinks is
5 perjury.

6 So one of those declarations is from the mother of
7 Ms. Ndonga, so not a person who would be providing a
8 declaration about Amin's treatment, but anyway, I take issue
9 with that accusation, because it's unfounded. And actually, I
10 would move to have that stricken from the record if it's not
11 going to be supported by evidence, because that's slandering
12 our plaintiff, our clients.

13 And as to, you know, whether you analogize what Amin
14 did to sexual assault or not, that's not what's at issue in
15 this case. You know, what's at issue is what MSNBC said on
16 their broadcast and none of our plaintiffs were interviewed or
17 provided information for that and so until you come back to us
18 and say here's someone who says they interviewed Ms. Ndonga
19 and here's what she said, I don't see how her testimony is
20 relevant.

21 THE COURT: All right.

22 MS. LEVINE: Judge, I was just going to hop in with
23 NBC's position on the declarations, just to the -- oh, I think
24 my computer might have frozen.

25 THE COURT: I can hear you.

1 MS. LEVINE: Okay. Great. So just to hop in with
2 NBC's position on that, we would be okay with going forward
3 with written declaration depositions or written question
4 depositions, but for the reasons I said earlier, we would ask
5 that that occur later in the discovery period.

6 THE COURT: Right. Let me at this point reflect.
7 I'm going to ask y'all to stay put. I'm going to personally
8 go offline for just a few minutes while I collect my thoughts
9 and reflect on everything that was well argued here, which I
10 very much appreciate.

11 And I want to look at one or two more things, so I
12 will return and retake the bench shortly with, I anticipate,
13 some feedback and reactions and I'll ask y'all to just stay
14 tuned for just a -- for just a few minutes.

15 Okay?

16 MS. NORINS: Thank you, Your Honor.

17 THE COURT: All right.

18 (Whereupon, a recess was taken.)

19 THE COURT: Hi, I'm back. Are you-all there?

20 Great. It looks like all of the parties' interests
21 are all there. Is anyone not there as far as y'all can tell
22 that needs to be present?

23 Okay. Good.

24 All right. Well, thank y'all for waiting for a
25 minute. I appreciate all of your arguments here today and

1 your written arguments, which have been extremely helpful, and
2 well done on all sides.

3 Here's where I am. You know, we start with Rule 45,
4 which provides that, first of all, in this case -- neither of
5 these cases are pending in this district, the motion to quash,
6 the subpoena is to be complied with, or the compliance was
7 sought in this district, it was required to be brought here,
8 and that's why we're here.

9 And so I am in somewhat of the awkward position that
10 Rule 45 sometimes puts us in of dealing with discovery issues
11 in a case that's not mine and not in this district at all, and
12 actually also interrelates to a second case that's also not in
13 this district and not mine. But that's -- that's the nature
14 of the interplay of these rules with regard to complex
15 litigation like this, so that sometimes does happen.

16 I want to make a comment first about service,
17 although it sounds like that likely is not an issue anymore,
18 but Ms. Norins has said that they haven't been able to confirm
19 that personal service or hand delivery occurred on the 29th,
20 and so just to make sure that that issue is covered, I
21 wouldn't be inclined to find an issue with service regardless.

22 My understanding is that the original service was
23 made to Ms. Ndonga's mother, who is a person who resides at
24 the same residence, her usual place of abode, it was
25 personally served on her. That would generally comply and be

1 considered to be personal service under Rule 4.

2 Rule 45 speaks more generally of being delivered to
3 the person, delivering a copy to the named person, but the
4 cases aren't all that precise. But I have a hard time
5 believing that it wouldn't comply with that, to engage in a
6 method that complies with personal service on a person as in
7 Rule 4. Rule 4, in the end, is much more formal and it
8 involves much more significant legal rights and issues, that's
9 how you bring someone to court as a defendant in a case where
10 their legal rights and in many cases financial jeopardy is
11 directly at issue by suing them, and so I just tend to believe
12 that personally serving someone in a way that complies with
13 Rule 4 is sufficient to deliver a copy to the named person
14 that is referred to in Rule 45.

15 In fact, there is substantial case law, and just it
16 speaks to the case law, which we don't really have to get
17 into, but in many cases, the courts are finding more informal
18 methods that would be short as to satisfying Rule 4, are still
19 sufficient to serve somebody under Rule 45, at least with
20 regard to a subpoena duces tecum, I think there is a
21 distinction sometimes drawn with a deposition subpoena, which
22 is more of a big deal.

23 But if anything, in other words, the law is starting
24 to move to the view that if there is a difference between the
25 methods of service of Rule 4 and Rule 45, Rule 45 is less

1 onerous than what's required under Rule 4, so this service has
2 satisfied Rule 4, which I understand occurred with service on
3 the mother at their same place of residence would satisfy,
4 then I think that that would end the inquiry on that issue,
5 and of course it would be moot if personal service was made
6 anyway, which it sounds like it was.

7 It's also relevant, of course, that there's a dispute
8 and that Ms. Ndonga is actually aware and has had no
9 limitation in getting counsel and filing this motion
10 negotiating with the other side, so the purposes of service
11 are, of course, met here, even if I know there was an
12 allegation or a challenge to the technicalities of it. I
13 think it's relevant that she's been actually aware as well.
14 Okay. So let's move on from service.

15 I believe Ms. Ngonda has raised an issue of
16 relevance. Now, relevance is not strictly speaking or
17 expressly a ground for which a court under Rule 45 can quash a
18 subpoena, although I do think that in many cases, in most
19 cases, and I think this is one, relevance is necessarily a
20 part of the undue burden inquiry, so -- but it isn't expressly
21 listed under Rule 45(d)(3), as one of the grounds for which a
22 subpoena can be quashed.

23 I do, though, think it comes into the analysis under
24 what's an undue burden, because you're trying to assess -- I
25 mean, all subpoenas create burdens, especially deposition

1 subpoenas, and I think this one because of its subject matter
2 and other circumstances that were identified by Ms. Norins,
3 apart from it perhaps creating more than the average amount of
4 burden and trying to assess what's undue burden, necessarily
5 part of the balancing involves the relevance subject matter
6 materiality to the need for the deposition.

7 So I really can't say at this point, I don't know, I
8 don't have enough to know, exactly how relevant or if at the
9 end of the day it really is relevant, but -- and I think
10 there's some reason to question whether the deposition of
11 Ms. Ndonga in the defamation case is likely to be of central
12 or core relevance.

13 The person is not identified by name in any of the
14 challenge statements, to my understanding, and she represents,
15 through Ms. Norins, that she was not interviewed, not a
16 source, didn't have contact with NBC in that regard. She's
17 not alleged to have undergone a hysterectomy, which is the
18 subject of the majority, although not all of the challenged
19 statements.

20 So, you know, at the end of the day, I can't find
21 it's established that it's likely to be of core relevance,
22 but, you know, a key fact in the case, I don't -- I don't know
23 one way or the other, but I think I can find that that's
24 likely at that point, but I don't have that in front of me.

25 On the other hand, I do think Dr. Amin is entitled to

1 take the deposition if by virtue of nothing else NBC has
2 identified Ms. Ndonga as a witness they intend to rely on with
3 knowledge of the case.

4 I mean, the whole purpose of Rule 26(1) is for the
5 parties to identify their -- their potential witnesses before
6 discovery even starts so that the other side can get the
7 discovery, including deposing those witnesses to know what
8 they have to say, so there's no surprise or ambush at trial.
9 That's the entire purpose of Rule 26(1).

10 And I think Ms. Evans is right that having been told
11 that these folks are witnesses for NBC in their defense, she'd
12 be hard pressed not to depose them to see what they have,
13 because if she doesn't do that and then they file summary
14 judgment declarations or testify at trial, shame on her for
15 not having taken the steps necessary to get that discovery.

16 So a Rule 26(1) disclosure identifying Ms. Ndonga as
17 a witness, a potential witness, is I think enough to entitle
18 Dr. Amin to seek the deposition or to take the deposition at
19 some point.

20 You know, now the question then becomes this
21 deposition is scheduled for I think Tuesday or Wednesday, and
22 is that something -- is the timing of it something that is at
23 issue here.

24 So, I mean, I'm not going to quash the subpoena,
25 because I don't think there is legal deficiency in the

1 deposition itself. But the question that I'm struggling with
2 is whether there's at least grounds to modify it in terms of
3 timing. Because I do think that there is substantial issues,
4 ultimately, I think undue burden with requiring Ms. Ndonga to
5 sit for a deposition at this time.

6 For numerous reasons, given the sort of complex
7 procedural intricacies in the -- of these various cases. I
8 mean, there is a stay of discovery in the *Oldaker* case, not a
9 stay of the case, that's true, a stay of discovery, all
10 discovery.

11 I disagree, at least from my reading of Judge Sands'
12 order with Ms. Evans's take on it that it was motivated or a
13 reflection of simply the fact that there is pending
14 dispositive motions and it's -- in other words, what one might
15 think of as a standard stay because of a pending 12(b) (6) or
16 12(c) motion, that's not what he said in that order.

17 The order talks expressly about the fact that this
18 is -- there's an ongoing federal investigation, or multiple
19 investigations, including criminal investigations and it could
20 prejudice or disrupt, interfere with that investigation or
21 those investigations for discovery to be going forward at this
22 time with regard to the *Oldaker* plaintiffs. That was the
23 reasoning for the stay, I believe. That's how I read it. And
24 as far as I understand, that's not been lifted. So, you know,
25 I don't know what the status of anything is, but that has not

1 yet been lifted at this time.

2 And so that raises two concerns in my mind. One, I
3 have a district judge who's made a finding that for the
4 interest of justice and the integrity of a governmental
5 investigation, that this discovery needs to be stayed.

6 Now, it's not literally discovery in the defamation
7 case, because the order obviously has the caption of just the
8 *Oldaker* case, and it doesn't -- Judge Sands isn't presiding
9 over the defamation case, so I don't know that one could say
10 that that stay literally but *de jure* regulates the defamation
11 case, I don't think it does.

12 But as a practical matter, allowing a deposition of
13 Ms. Ndonga at this time would completely defeat the purpose
14 and countermand the concerns that motivated that stay, which
15 again, were not just for convenience and efficiency of the
16 parties because there's pending motions, it was because of a
17 much more serious and public interest concerns because of an
18 investigation.

19 And it's quite awkward for me, sitting here, to
20 ignore that and to say that I'm going to allow something to go
21 through that will defeat a District Judge's stay order in
22 another -- in another district, although in another case one
23 that would *de facto* completely countermand that stay, at least
24 at this time.

25 So and as it relates to Ms. Ndonga's personal

1 prejudice and burden to her, I think there's similar reasons
2 to allow this deposition to go forward right now, given the
3 stay of the *Oldaker* case, potentially subjects her to quite
4 prejudicial circumstances where -- and, you know, even if it
5 weren't for her health concerns and the privacy of the subject
6 matter, it would potentially expose her to multiple
7 depositions over the same subject matter separated by, you
8 know, many weeks or months, allowing counsel -- I mean, and
9 I'm not necessarily suggesting this is the intention, but it
10 would effectively allow Dr. Amin's counsel -- and I know
11 there's different counsel, so -- but still, it would allow
12 Dr. Amin's counsel to have the benefit of following up months
13 later and formulate questions and tread it -- or ask -- have
14 months and months to figure out how to ask things a different
15 way or follow-up or fix things in the earlier deposition.

16 I mean, all the things that lawyers would love to be
17 able to do, to depose their opponent and then study that
18 transcript for months and months and then get another chance,
19 I think that that is unfair and prejudicial.

20 Again, and I'm not suggesting that's a tactical
21 choice here, I am sympathetic to Ms. Evans' statement, this is
22 a witness identified by my opponent, I have no choice but to
23 depose this person. There's two cases, that is what it is,
24 that's not my doing. And I'm not even counsel in that case.

25 So I'm not saying that's intentional, I'm just saying

1 that, as a practical matter, inevitably, that's the risk and
2 prejudice and result that would -- that I think, Ms. Ndonga
3 could be faced with here.

4 And it's unnecessary, I think, because the deposition
5 is what -- we're four months away from the close of discovery
6 in the NBC case. And I think there's more than enough time to
7 stay this and still have time left in the discovery period.

8 What I'm contemplating here is a stay of 60 days, a
9 stay of 60 days, and that I also would, as Rule 45 permits me
10 to do, Rule 45(f), transfer this order modifying the subpoena,
11 so I'm denying quashing it, but I'm modifying it, with a stay
12 of at least 60 days and transferring the order for enforcement
13 purposes to the Southern District, the court with -- the forum
14 court over jurisdiction over the NBC case, the defamation
15 case.

16 And the forum court can overrule this, modify this,
17 extend this. I think ultimately, it is really best for the
18 forum court, Judge Wood or the magistrate judge there to be in
19 the best position to assess whether or not and to what extent
20 they find it warranted to continue this, if the *Oldaker* stay
21 is still going on, or to overrule it.

22 And all of that is -- it is their case management
23 order, this is their schedule, it's already awkward having two
24 different overlapping cases in two different districts, and to
25 add a third, the Northern District of Georgia, imposing yet

1 different and potentially inconsistent schedules would really
2 start to have too many cooks in the kitchen here.

3 So I think it's warranted to stay this, not to quash
4 it. I think Dr. Amin is entitled to take the deposition, you
5 know, at some point. I don't think there is a necessity of
6 that happening now, and the balance of concerns and factors
7 weigh in favor of staying it at this time.

8 Without knowing what will be the case in 60 days,
9 whether these federal investigations will still be going on or
10 whether that really is of a concern to the Southern District
11 or whether there are other concerns or other reasons to
12 continue this or not continue this, I think 60 days is a
13 placeholder at this time that would still allow two more
14 months in the discovery period, if that gets extended, which
15 is not for me to say, and I think that gives sufficient time
16 for Dr. Amin to do everything that he needs to do in
17 discovery.

18 I'm not -- I mean, I understand Ms. Evans's concern
19 that you want to take the discovery in a particular order and
20 you have tactical reasons for doing that, which generally
21 speaking is -- I mean, everyone has the right to, in general,
22 try to take the discovery along the lines and, you know, on
23 the schedule that you're intending to.

24 But I really haven't heard enough to say that that's
25 substantial prejudice. Again, I can't even say that this is

1 going to be at the end of the day of core central relevance
2 here, given the fact that there are no alleged hysterectomies,
3 and for other reasons, but so -- but in any event, the stay of
4 60 days would still allow half of the remaining discovery
5 period still available.

6 At that point, I think you-all need to get with the
7 judges down there to see if there's any application for this
8 to be continued, which very well might require them to extend
9 discovery, and whether they'll do that, whether they find that
10 to be warranted, whether that's something that is -- they're
11 in a far better position to decide what's necessary, what is
12 appropriate, what the facts are and what they're willing to
13 do. This is their schedule that I want -- I'm sensitive to
14 not wanting to impose on or impose external modifications on
15 too much.

16 The general refusal to stay discovery in that case on
17 the grounds of these pending investigations, I just don't
18 know -- I think there this is a distinction that could be
19 drawn that I could see to saying discovery is not stayed
20 altogether as a general matter, but yet, we're talking about
21 at least plaintiff in that other case, where there's a
22 specific order, that allowing that sort of discovery of that
23 plaintiff and the other plaintiffs would interfere with
24 federal investigations, I don't -- I just don't know that that
25 was what the Southern District order was intending to find,

1 that that was -- I think it was refusal to stay discovery as a
2 general matter altogether, not -- in other words, without
3 prejudice to whether it may make sense to at least temporarily
4 stay specific depositions that go to the core of the concerns
5 raised by Judge Sands.

6 But at the end of the day, if the Southern District
7 wants this deposition or others to go forward, even though it
8 might effectively be de facto inconsistent with what
9 Judge Sands ordered, that's, I think, for them to decide. I
10 don't -- as a, you know, third court coming in, the cook in
11 the kitchen problem, I'm not going to overrule Judge Sands in
12 that way at least de facto.

13 So to sum up where I'm coming out with here is under
14 Rule 45(3)(A), I do find there are grounds to modify, not
15 quash the subpoena on grounds of undue burden, that will -- I
16 think the grounds -- and I'll order this to be stayed for a
17 period of at least 60 days.

18 And then transfer this order to the Southern District
19 of Georgia, under the docket of the defamation case for them
20 to enforce, and like any other interlocutory order to
21 entertain appeals, obviously, as a magistrate judge order,
22 anyone can appeal this to the presiding district judge, but of
23 course they also can modify this as they see fit, including
24 extending it, if that's what the stay -- if that's what is
25 requested and they find it's warranted.

1 So that, I think, strikes the appropriate balance
2 among all these concerns and that will be my ruling.

3 I'm going to -- I'll issue a brief written order on
4 the docket, but I'm not likely to repeat all of this. I mean,
5 just in the interest of efficiency and getting this moving,
6 I'll likely refer to and incorporate my comments here for more
7 reasoning and background, and so I'll consider all my comments
8 here since I came back from the break to be part of my order
9 and opinion here on this matter.

10 And I guess formally, that means granting in part and
11 denying in part the motion, and modifying the subpoena with
12 the stay.

13 Any questions or issues or anything else before we
14 go?

15 MR. GRUBMAN: Your Honor. This is Scott Grubman.
16 And I'm sorry, my camera is not working.

17 THE COURT: That's okay.

18 MR. GRUBMAN: So if -- if and -- it's -- I have to
19 talk to my colleague, but I assume with all due respect, we
20 are going to want to appeal this to a district court judge.
21 Should that -- will your order make clear that that appeal is
22 more properly done down in the Southern District as opposed to
23 here?

24 We would appreciate -- and, Your Honor, if it matters
25 to you --

1 THE COURT: Um-hmm.

2 MR. GRUBMAN: -- my suggestion would be that it does,
3 quite frankly, I think -- even though I respectfully disagree
4 with your 60 days, I do absolutely think that even though they
5 brought this motion in the right jurisdiction under Rule 45,
6 that it is appropriate for Judge Cheesbro and Judge Wood to
7 decide this.

8 I mean, with all due respect, there's a lot of talk
9 about stepping on Judge Sands' toes, but respectfully,
10 Your Honor, I do believe this order improperly steps on Judge
11 Wood and Judge Cheesbro's toes, and you're in a very bad
12 position, because either way, you're going to step on a
13 judge's toes that is from another district.

14 So to the extent your Honor would consider it, I
15 would ask that it -- you know, because I think what's probably
16 going to happen is Judge Cheesbro is going to get this order
17 and be like, well, what the heck do I do with this. It's
18 probably a pretty unique situation.

19 THE COURT: Yeah, these situations as far as I'm
20 concerned, and in terms of how the rule works here, but, I
21 mean, Rule 45(f) says that we can order -- transfer the order
22 to the court where the motion -- the issuing court may
23 transfer the order to the court where the motion was made,
24 the --

25 MR. GRUBMAN: That very well might be. Judge, to be

1 honest with you, I've just never dealt with that specific
2 subsection.

3 THE COURT: Yes.

4 MR. GRUBMAN: So that very well might be enough.

5 THE COURT: Right.

6 MR. GRUBMAN: The second question I have, Your Honor,
7 is more -- and this might be for your clerk. I know this Zoom
8 is being recorded. Is there a transcript? And the reason I
9 ask is because, quite honestly, I believe Ms. Levine --
10 Levine -- I don't know exactly how you pronounced it has taken
11 positions in this statement, in this hearing as an officer of
12 the Court, that are -- that is inconsistent with positions
13 that NBC has taken in the Southern District, and quite
14 honestly, Your Honor, I would like to use that -- the
15 transcript of this hearing to consider proper motions practice
16 for then the Southern District, so if you can just tell us the
17 best way to get a transcript or have your -- I could ask your
18 clerk offline, and that would be great, assuming there's a
19 court -- I don't even know if there is a court reporter on
20 here.

21 THE COURT: Yes. There is a court reporter online at
22 this point. And I think the best thing to do would be to
23 contact my deputy clerk, Ms. Evans, or my law clerk,
24 Ms. Jenkins.

25 MR. GRUBMAN: Okay. Thank you very much.

1 THE COURT: She can put you in touch with the court
2 reporter to make any arrangements that are necessary.

3 So with respect to the question of where to lodge an
4 appeal. I mean, I can't really give legal advice, of course.

5 MR. GRUBMAN: Right.

6 THE COURT: But the district judge here,
7 Judge Boulee, is presiding over this particular motion, and so
8 I think -- I can't -- I can't answer your question, whether it
9 would more logically go to him --

10 MR. GRUBMAN: Yes, Your Honor.

11 THE COURT: -- or to the judges in the Southern
12 District.

13 MR. GRUBMAN: Yes, Your Honor. I understand.

14 THE COURT: I mean, I tend to think now that I think
15 of it that an appeal of my ruling would logically go to my
16 superior, who is Judge Boulee.

17 And, I mean, to the extent the order then in the
18 future gets extended or modified, in the Southern District,
19 then that will be a different matter, but that the immediate
20 appeal would I think most logically -- or the rules would
21 provide that to go to my superior, Judge Boulee, who has the
22 authority over me here. I think that that would probably be
23 the answer, the more I think about it.

24 MS. EVANS: Your Honor, one question and appreciate
25 the discussion, and we will have to figure out that path. I

1 think you're right, we'll see. But the case docket shows
2 Judge May as the district court judge as opposed to
3 Judge Boulee.

4 THE COURT: So I'm sorry. I'm sorry. I'm sorry. I
5 took my reading glasses off and that was a bad idea. So I
6 misread the initials. You're right, Judge May.

7 MS. EVANS: Okay. I just wanted to make sure that
8 something hadn't changed. Thank you, Your Honor.

9 MR. GRUBMAN: Thank you, Judge. Those are all the
10 questions I have.

11 THE COURT: All right. Anything else then before we
12 adjourn?

13 MS. NORINS: No, Your Honor. Thank you.

14 MS. EVANS: Thank you, Your Honor.

15 THE COURT: All right. All right. Thank you very
16 much, everyone. I'm going to get this written order out as
17 soon as possible, but it will -- it's immediately effective
18 that the deposition as of next week is stayed, and -- but I'll
19 get the written order out as soon as possible. I'll try to
20 get that out by the end of the day.

21 MS. EVANS: Thank you, Your Honor.

22 THE COURT: All right. Thank you.

23 MS. LEVINE: Thank you.

24 THE COURT: Have a good weekend, everybody.

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1 (Whereupon, the proceedings were adjourned at 11:35
2 a.m.)
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1 REPORTERS CERTIFICATE
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4 I, Jana B. Colter, Official Court Reporter for the
5 United States District Court for the Northern District of
6 Georgia, with offices at Atlanta, do hereby certify:

7 That I reported on the Stenograph machine the
8 proceedings held via Zoom Videoconferencing on March 31, 2023,
9 in the matter of *Dr. Mahendra Amin v. NBCUniversal Media, LLC*,
10 Case No. 1:23-MI-00022; that said proceedings in connection
11 with the hearing were reduced to typewritten form by me; and
12 that the foregoing transcript (56 Pages) is a true and
13 accurate record of the proceedings.

14 This the 1st day of April, 2023.

15

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18 /s/ Jana B. Colter, FAPR, RDR, CRR, CRC
Official Court Reporter

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